IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED	STATES	OF	AMERICA,

Plaintiff

V.

Evelio Jimenez-Cruz,

Defendant

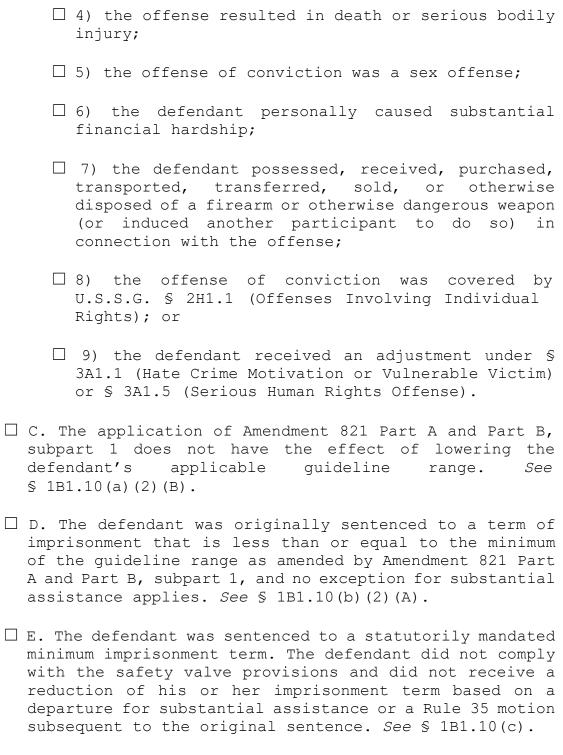
Criminal No. 17-CR-219-2

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

	ant is <u>not</u> eligible for a sentence reduction based lowing factor(s):
case defen	e guidelines range that applied in the defendant's was not determined by U.S.S.G. § 4A1.1(d) or dant's status as a zero-point offender under er 4, Part A.
speci	he defendant does not meet \underline{all} of conditions fied by § 4C1.1. Specifically, one or more of the wing criteria applies:
	1) the defendant has criminal history points from Chapter Four, Part A;
	2) the defendant received an adjustment under U.S.S.G. § 3A1.4 (Terrorism);
	3) the defendant used violence or credible threats of violence in connection with the offense;



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or *pro bono*, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection

by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

 □ The defendant may be eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons: Defendant may be eligible under Amendment 821 Part B, Subpart 1 because he was sentenced as a "zero-point offender" given his lack of criminal history and his conduct does not appear to have implicated the statutorily listed factors. I note that a firearm was found in the vessel used in the offense, see Dkt. 107 (PSR) at 4 ¶10, which would be disqualifying if Defendant was deemed to have possessed or transported the weapon. However, the presentence report also stated the weapon could not be linked to an individual defendant. Id. at 4 n.2. Further, Defendant was not charged with a firearm count nor received an increase in Guideline points for a gun.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 29th day of November, 2023.

s/ Bruce J. McGiverin
BRUCE J. McGIVERIN
United States Magistrate Judge